Lessons Learned: Adjudicating Sexual Misconduct On A College Campus

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PRESENTATION OBJECTIVES

- To share lessons learned from college adjudication process
- Encourage participants to identify action items for their conduct procedure
- Provide opportunity to learn from other grantees’ experiences
CAN THEY FIND HELP?
ACCESS TO INFORMATION

- Student Handbook/Student Code of Conduct
- New student/family orientation
- Posted in public spaces (bathrooms, bulletin boards)
- School/district website
- Annual Report/communication tool
- By Referral
A sleeping or passed out woman is NOT fair game...

it's 10 years in prison!

Johnson County Sexual Assault Response Team:
Call 335-6000 for assistance 24/7

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University of Iowa
RESOURCE AND REFERRAL OPTIONS

**Seek an Advocate**
- 24-Hour Assistance ———
  - RVAP
    - (319) 335-6000
  - Domestic Violence Intervention Program
    - (319) 335-1015
  - Monsan United Asian Women of Iowa
    - (888) 888-4541

**Seek Medical Assistance**
- UIHC Emergency Treatment Center
  - (319) 335-933
- Mercy Hospital
  - (319) 339-3600

**Contact Law Enforcement**
- Emergency 911
- Non-Emergency
  - On Campus ————
    - University of Iowa Police
      - (319) 335-5022
  - Off Campus ————
    - Iowa City Police
      - (319) 356-5275
    - Coralville Police
      - (319) 248-3800
    - Johnson County Sheriff
      - (319) 335-6020
    - North Liberty Police
      - (319) 626-5724
    - University Heights Police
      - (319) 885-6500

**Make a Complaint or Consult about UI Policies/Procedures**
- Office of the Sexual Misconduct Response Coordinator
  - (319) 335-6200
- Office of Equal Opportunity and Diversity
  - (319) 335-0705

**Ask For Accommodation to Address Safety Concerns or the Impact of Trauma**
- Office of the Sexual Misconduct Response Coordinator
  - (319) 335-6200
  - Housing change
  - Class reassignment
  - No contact directive
  - Extension on an assignment
  - Others, based on situation

**UI Confidential Resources**
- RVAP
  - (319) 335-6000
- University Counseling Services
  - (319) 335-7394
- Ombudsperson
  - (319) 335-3608
- Women’s Resource and Action Center
  - (319) 335-1486
- Faculty and Staff Services (EAP)
  - (319) 335-2088

For more information, see the Office of the Sexual Misconduct Response Coordinator website at osmrc.uiowa.edu
HOW EASY IS IT TO ACCESS COMPLAINT INFORMATION?

- Website
- In the student handbook/code of conduct?
- Printed materials in the counselor’s office
- Printed materials in the school office, brochure rack
- Printed materials in the Principal’s office
- Printed materials in the district office/superintendent’s office
Report a Problem

Among a victim's options is to make a complaint. Depending on the situation, there may be two separate complaint options - through law enforcement and the university. City and campus police enforce laws and investigate alleged criminal activity. The university enforces policies and investigates alleged policy violations. These processes are different and may result in different outcomes and consequences. The Office of the Sexual Misconduct Response Coordinator (OSMRC) is responsible for educating possible complainants about both of these options.

The OSMRC responds to reports of sexual misconduct (including sexual harassment and sexual assault), stalking, and domestic/dating violence involving members of or visitors to the university community. Reports can be made in person (by appointment), over the phone, via email, or using this online form. Not every "report" results in a university complaint.

If you are an academic or administrative officer (A/ACAO), you have additional responsibilities under University policy. If you are not sure if you are an A/ACAO, click here.

The OSMRC will make every effort to provide prompt and effective responses to reports of misconduct, but if you have immediate concerns, the following resources are available 24 hours a day, seven days a week to assist:
HOW CAN A STUDENT ACCESS HELP IN YOUR DISTRICT/COMMUNITY?

• 3 existing sources

• 4 possible sources
IDENTIFY WHERE YOUR COMPLAINT PROCESS CAN BE FOUND

- 3 sources or references
- 4 possible new sources
WHEN ARE YOU REQUIRED TO ACT?

If a responsible employee knew, or in the exercise of reasonable care should have known about the incident. (2001 Guidance, 2011 DCL)

- Notice can come from others besides victims, and may even come indirectly from the media or elsewhere.

- Anonymous voice mail, email, or written messages, you are still on notice
WHO RECEIVES THE REPORT?

- A single, coordinating office and procedure to deal with all reports
- Title IX Coordinator/Deputy Title IX Coordinator
- No barriers/hierarchy—responsible employee reports directly
WHY SINGLE COORDINATING OFFICE?
(Adapted from Maisto Smith, 2013)

- Consistent/uniform reporting of incidents
- Coordination and linkage to victim/survivor resources
- Management of Title IX and Student Conduct procedures
- Climate checks/trend tracking
- Centralized control of investigative process
- Sequencing of district’s response
About Us

The Office of the Sexual Misconduct Response Coordinator (OSMRC) coordinates the university's response to reports of sexual assault, sexual harassment, dating violence, domestic violence, and stalking when those reports involve members of or visitors to the university community. Informed by current federal guidance, the OSMRC aims to ensure university responses promptly and effectively stop problem behavior, prevent its recurrence, remedy its effects. The office:

- Provides a central place to report an incident
- Provides expert advice about university policies and procedures
- Provides referrals to campus and community confidential resources and victim advocates
- Facilitates accommodations to address safety concerns and support victims or complainants so academic and professional pursuits may continue unimpeded
- Coordinates the university's response by working with victims or complainants to ensure their wishes are understood and inform the process
- Collaborates with first responders, judicial administrators, law enforcement, and advocates to assist with a resolution that balances the needs of the individuals involved with those of the larger community.
...WHY WAIT FOR A CRISIS?

SPECIAL COUNSEL’S REPORT
STATE OF IOWA BOARD OF REGENTS
UNIVERSITY OF IOWA
INTERNAL INVESTIGATION
SEPTEMBER 18, 2008
RESPONSE TO INCIDENT/REPORT

Central contact meets with potential complainant
- Explain response role (limit to confidentiality)
- Complaint options (criminal, administrative, civil remedies)
- Provide linkage with victim advocacy (privileged resource)
- Assess for interim remedial action (safety plan)
- Respond to reporting barriers
HOW DOES YOUR PROCESS OVERCOME BARRIERS TO REPORTING?

- Crimes that did not result in injury less likely to be reported
- Desire to maintain privacy
- Fear of being blamed by others
- Fear of family or others finding out about abuse

Others?
ADDRESSING BARRIERS TO REPORTING

- Identify 3 ways in which your process addresses barriers.
- Are there additional barriers your process could address?
IS INTERIM ACTION NEEDED?

- Specific behavior (predatory, strangulation)
- Multiple accused perpetrators
- Ongoing access to other potential victims
- Request/concern of reporting party (academic, extra-curricular)
- Previous reports about similar behavior (pattern)
POSSIBLE INTERIM ACTION

- Psychological/emotional support for complainant
- Instructing the accused to immediately cease unwanted conduct
- No Contact Directive
- Reassignment of the accused/complainant
- Escorts/Parking assignments/specific door/seat assignments
- Academic support
• Contact described (in-person, text, social media, third person, etc.)

• Clarification about distance apart—no closer than 25 feet
WHAT INTERIM ACTION WOULD YOU CONSIDER?

- The “Undetected Rapist”

- New! Updated 2014 NaBITA Threat Assessment Tool (PDF)
INVESTIGATION:
INVESTIGATOR REQUISITES (J. Shipper, 2012, NACUA)

- Fair, impartial, trained, trusted, have appearance of independence
- Able to discuss difficult topics with compassion, without awkwardness
- Knowledge of the law and school district policy
- Understands resources available—specific details
- Good communicator, strong interview skills
- Culturally competent
INVESTIGATION PREP  

(J. Shipper, 2012, NACUA)

- Decision to move forward (Is there a criminal investigation?)
- Gather documents (records, Facebook posts, text messages, etc.)
- Create a timeline, decide when you will interview accused
- Keep Title IX Coordinator updated
- Consider team interview
- Location to accommodate all parties present
- Invitation for parties to bring advisor/advocate/parent
INVESTIGATION: GENERAL TIPS
(J. Shipper, 2012, NACUA)

- Consider location, allow ample time, do not interrupt, build rapport
- Ask is there anything else two or three times
- Do not editorialize or comment
- Do not use cute terms to discuss body parts
- To the greatest extent possible explain why you are asking questions
- Set the stage so that you may ask a difficult questions
UNIVERSITY/COLLEGE HEARINGS

- Campus Hearing Boards vs. Investigator/Adjudicator Model
- NCHERM Group 2014 Whitepaper, *EQUITY IS SUCH A LONELY WORD*
- Training challenge
ISSUANCE OF OUTCOME

- In person, in writing (share outcome & sanctions when directly related to complainant)
- Both parities should receive information at same time
- Written outcome should include decision rationale
- Timely in reference to your policy (OCR guidance 60 days)
- Document/communicate reason for delay
APPEAL

- Not required
- Ensure process is clear and available to both parties
- Recommended where procedural error or new or unavailable evidence could significantly impact the outcome
- Where a sanction is substantially disproportionate to the findings
SANCTIONING (S. Schuster, 2014)

- Role of sanctions in an educational setting
- Publish guidelines within policy
- Do not mediate or impose educational sanction in sexual assault case
- Legal responsibilities
  - Remediate the impact of the behavior on the individual and school
  - Stop the behavior and prevent its recurrence
TRAINING FOR EMPLOYEES INVOLVED IN CONDUCT  (Foerster, Maisto Smith, Scaduto, 2014)

- Working with and interviewing victim/survivors
- Particular types of conduct that would constitute sexual assault, dating violence and stalking
- Proper standard of review
- Consent and the role of drugs/alcohol
- Importance of accountability for those found responsible
- Remedial actions for the respondent
MORE TRAINING CONTENT

(Foerster, Maisto Smith, Scaduto, 2014)

- Assessing credibility
- Evaluating evidence and weighing it in an impartial manner
- How to conduct investigations
- Confidentiality
- Effects of trauma, including neurobiological change
- Cultural awareness
COORDINATED COMMUNITY RESPONSE MODEL

- Links between Policy, Education/Training, Intervention
- CCR-team members help to codify process and procedure
- CCR-team members alert to possible gaps, conflicts or needs
MONITORING CLIMATE

- Include an anti-retaliation clause in policy (remind parties)
- Retaliation is a new/separate incident
- Coordinated Community Response Team (identifying needs)
- Climate Surveys
GUIDANCE TO WHICH COLLEGES ARE PAYING ATTENTION

- OCR Title IX Q & A (April 2014)
- OCR Voluntary Resolution Agreements
- VAWA 2013
- Not Alone, Whitehouse Task Force Recommendations
- OCR: 2001 Guidance, 2011 Dear Colleague Letter
- DOJ/OVW CAMPUS Program Requirements
MORE GUIDANCE COMING FOR COLLEGES

- By 10/2014, the DOJ/OVW & NIJ will begin assessing for promising practices for investigating and adjudicating campus sexual assaults.

- By 9/2014, DOJ’s Center for Campus Public Safety will develop a training program for campus officials involved in investigating and adjudicating sexual assault cases.

- By 6/2014, DOJ/OVW will launch a comprehensive online technical assistance project for campus officials.
WHAT COLLEGES WOULD LIKE TO KNOW FROM OUR SECONDARY COLLEAGUES...

- What prevention education started before students arrived on our campus?
- Did you experience this student’s misconduct, too?
- Current trends related to alcohol/drug use
- Current trends related to technology
SOURCES

- Survey of Campus Sexual Violence Policies and Procedures (McCaskill Survey, 2014)


- National Association of College and University Attorneys webinar: Breaking New Ground in Title IX Sexual Assault and Harassment Investigations and Resolutions: The University of Montana Case and Its Implications, June 27, 2013
THANK YOU!

PLEASE CONTACT ME WITH QUESTIONS OR SUGGESTIONS

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